



**EB-2013-0361**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

**AND IN THE MATTER OF** an application by Jericho Wind, Inc. for an order or orders pursuant to section 92 of the *Ontario Energy Board Act, 1998* (as amended) granting leave to construct transmission facilities in the Municipality of Lambton Shores, Lambton County and the Municipality of North Middlesex, Middlesex County, Ontario.

**BEFORE:**

Ken Quesnelle  
Presiding Member and Vice Chair

Ellen Fry  
Member

Peter Noonan  
Member

**DECISION AND ORDER**

May 6, 2014

## INTRODUCTION

This is an application made under section 92, 97 and 101 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the “Act”) for leave to construct certain electrical transmission facilities, approval of forms of agreement to be offered to landowners, and authority to construct a work upon, under or over a highway, utility line or ditch.

For the reasons given below the Ontario Energy Board (the “Board”) approves the application.

## SUMMARY OF APPLICATION

Jericho Wind, Inc. (“Jericho”) filed an application on October 11, 2013 with the Board for an order granting leave to construct a collection substation and a transmission line in Middlesex County and Lambton County (collectively, the “Transmission Facilities”). The Transmission Facilities will be used to transmit power generated by the Jericho Wind Energy Centre to the Bornish Customer Switching station, for delivery to the Independent Electricity System Operator-controlled grid.

The Transmission Facilities and the proposed route are as described in the application at Exhibit B/Tab 1/Schedule 1 and Exhibit F/Tab1/Schedule 1/Appendix B4 as amended November 29, 2013.

Jericho filed an update to its application on November 29, 2013.

## SUMMARY OF THIS PROCEEDING

The Board issued a Notice of Application and Written Hearing (“Notice”) on October 25, 2013. The Notice was served and published in accordance with the Board’s letter of direction. Pursuant to the Notice, several requests to intervene in this proceeding were filed with the Board.

The Board subsequently granted intervenor status to Hydro One Networks Inc. (“Hydro One”), the Independent Electricity System Operator (“IESO”), the Corporation of the County of Middlesex (“Middlesex County”) and the Corporation of the County of Lambton (“Lambton County”).

Pursuant to Procedural Order No. 2, Board staff and Lambton County filed interrogatories with respect to the Jericho's evidence. Jericho provided its responses to all interrogatories. Following the completion of the interrogatory process, the Board received written argument from Jericho, Lambton County and Middlesex County.

The Board also received letters of comment in relation to this application. The letters of comment raised several procedural issues, which were addressed in the Board's Procedural Orders. The letters of comment also raised several substantive issues, which are addressed below.

## **SCOPE OF THIS PROCEEDING**

The Board's power to grant an applicant leave to construct electricity transmission facilities is set out in subsection 92 (1) of the Act which states:

92 (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection.

In discharging its duties under section 92 the Board is governed by the provisions of section 96 of the Act which states:

96 (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work.

(2) In an application under section 92, the Board shall only consider the following when, under subsection 1, it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.

2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources.

In addition, section 97 of the Act states:

97. In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board.

The wording of subsection 96(2) requires the Board to consider only the factors specified in subsection 96(2) in determining whether the proposed Transmission Facilities are in the public interest. Accordingly, issues raised in the letters of comment concerning health and safety are outside the scope of this proceeding. It would also be outside the scope of this proceeding to apply the broad concept of public interest proposed by the Lambton County, Middlesex County and in one of the letters of comment. While it may be appropriate to consider the concept of public interest from a broader perspective in other contexts, the Act clearly limits the factors the Board is to consider in the context of leave to construct applications.

In considering the interest of consumers with respect to prices under subsection 96(2) of the Act the Board limits its review to the direct price impact of the Transmission Facilities. Accordingly, the issue raised in a letter of comment concerning the impact of renewable generation on electricity prices in general, and the impact of Government of Ontario's renewable energy policy on electricity prices, are not within the scope of this proceeding.

The Board considers the proposal submitted by the applicant in accordance with the factors specified in subsection 96 (2). Granting of the leave to construct is dependent on whether or not the Board considers the resulting impacts, with respect to the 96 (2) factors, of the proposed project to be acceptable. The proposal in this application is to build an above ground transmission line along a specified route. The Board's considerations in this decision are based on that proposal.

Section 101 of the Act provides that "... if after the hearing the Board is of the opinion that the construction of the work upon, under or over a highway, utility line or ditch is in

the public interest, it may make an order authorizing the construction upon such conditions as it considers appropriate.”

## **INTERESTS OF CONSUMERS WITH RESPECT TO RELIABILITY AND QUALITY OF ELECTRICITY SERVICE**

Jericho filed a System Impact Assessment by the IESO and a Customer Impact Assessment by Hydro One.

### *System Impact Assessment*

The System Impact Assessment assesses whether the proposed connection to the electricity grid will have an adverse impact on the quality and reliability of the electricity grid operation.

The IESO issued a System Impact Assessment Report in respect of the Jericho project on December 21, 2011, a first Addendum Report on June 6, 2012 and a second Addendum Report on December 12, 2012 (collectively the “SIA”).

The SIA concluded that the proposed connection is expected to have no material adverse impacts on the reliability of the integrated power system, subject to the requirements specified in the SIA being met. No party objected to this conclusion.

### *Customer Impact Assessment*

The Customer Impact Assessment assesses the impact of the proposed connection on Hydro One customers in the area.

Hydro One issued the Customer Impact Assessment on December 20, 2011, a first Addendum Report dated June 8, 2012 and a second Addendum Report dated February 1, 2013 (collectively the “CIA”).

The CIA assessment concludes that the proposed connection, will not adversely impact existing Hydro One customers in the area, subject to the requirements specified in the CIA. No party objected to this conclusion.

**Board Finding**

Based on the conclusions of the SIA and the CIA, the Board is satisfied that the proposed connection will not adversely impact the interests of consumers with respect to reliability or quality of electrical service if the conditions in the SIA and CIA are met.

**INTERESTS OF CONSUMERS WITH RESPECT TO PRICES**

Jericho has stated that it will pay for the costs of the proposed Transmission Facilities. In response to Board staff interrogatory no. 4, Jericho also confirmed that it will be responsible for any costs related to fulfilling the requirements of the SIA.

**Board Finding**

The Board finds that the construction and connection of the proposed Transmission Facilities will not have an impact on the price of electricity paid by Ontario consumers.

**POLICIES OF THE GOVERNMENT ON THE PROMOTION OF THE USE OF RENEWABLE ENERGY SOURCES**

Jericho states that in July 2011 it was awarded a contract in respect of the Jericho Wind Energy Centre by the Ontario Power Authority (the “OPA”) under the Government of Ontario’s Feed-in-Tariff (“FIT”) Program. The Jericho Wind Energy Centre is a 149 MW renewable energy generation facility. The proposed Transmission Facilities are needed to convey electricity from the Jericho Wind Energy Centre to the Bornish Customer Switching Station, which will in turn be connected to and allow for electricity from the Jericho project to be conveyed to the IESO-controlled grid, through a shared line.

Based on the award of the FIT contract, Jericho submits that as the development of the Jericho Wind Energy Centre promotes the use of renewable energy sources in a manner consistent with the policies of the Government of Ontario, the Transmission Facilities are in the public interest as contemplated in subsection 96(2) of the Act. The intervenors have not disputed this.

**Board Finding**

Given the awarding of a FIT contract to Jericho, the Board finds that the approval of the proposed Transmission Facilities would be consistent with policies of the Government of Ontario favouring the promotion of the use of renewable energy sources.

**FORMS OF AGREEMENT OFFERED TO LANDOWNERS**

Section 97 of the *Act* requires that the Board be satisfied that Jericho has offered, or will offer, to each landowner affected by the approved route or location an agreement in a form approved by the Board.

The land area required for the proposed Transmission Facilities consists of:

- a) the lands required for the collection substation;
- b) the lands required for the transmission line; and
- c) any other lands that may be required either on a temporary basis for construction purposes or on an ongoing basis for access purposes.

The collection substation is to be located on private lands and the transmission line is to be situated within a combination of private easements and municipal road rights-of-way ("ROW").

Jericho submitted the following forms of land use agreements for the Board's approval:

- Transmission Overhang Agreement;
- Transmission Easement Agreement;
- Guy Wire Easement (Construction, Maintenance and Access Easement Agreement);
- Substation Lease Agreement; and
- Option to Purchase Agreement for Substation.

*Land Requirements for the Collection Substation*

The land required for the substation is privately owned. Jericho states that it has secured the necessary land rights by entering into a lease for the property and also holds an option to purchase the property.

No party raised any concerns with the forms of agreement offered by Jericho in relation to the substation.

*Land Requirements for the Transmission Line*

The transmission line will run in part within municipal road ROWs and on privately owned land.

With respect to the sections of the transmission line to be located on private property, Jericho has submitted the form of agreement offered to the landowners. Jericho states that it has entered into agreements with all affected private landowners and noted that the agreements are the same forms of agreement approved by the Board in the earlier Bornish, Kerwood and Jericho combined applications (EB-2013-0040/EB-2013-0041).

**Board Findings**

The Board notes that all the affected landowners have executed agreements with Jericho. None of these landowners have indicated to the Board that they were unwilling to sign these agreements because they had issues with the form of agreement offered to them by Jericho and submitted to the Board for approval under section 97 of the Act. The Board notes that the forms of agreement submitted by Jericho are the same forms of agreement approved by the Board in the earlier Bornish, Kerwood and Jericho decision. The Board approves the form of agreements offered to the landowners, noting as it did in its approval in the combined cases of Bornish, Kerwood and Jericho that its approval in this context does not necessarily imply that the Board would, or would not, approve these forms of agreement in any future proceedings.



## Section 101 of the Act

Jericho has applied under section 101 of the Act for an order approving the use of ROWs in Middlesex and Lambton Counties in the construction of the proposed Transmission Facilities upon, under or over a highway, utility line or ditch.

Jericho has entered into a Road Use Agreement (“RUA”) with Middlesex County, in relation to the sections of the line that are to be located on ROWs owned by Middlesex County (the “Middlesex RUA”).

Middlesex County submitted that any approval of the application by the Board should be “conditional upon the Board approving the specific route and construction parameters (mitigation measures) which exist in Schedule B of the [Middlesex RUA ] Agreement and the need for Jericho to follow the County’s by-law process by obtaining all necessary permits, as provided for in s. 7(e) and Schedule “D” of the [Middlesex RUA] Agreement”.<sup>1</sup>

A draft RUA has been agreed to by Jericho and Lambton County staff (“the Lambton RUA”).

However, Lambton County submitted that the Board should delay its consideration of the portion of the application which deals with the location of transmission lines and related infrastructure within the public road allowances until such time as Lambton County Council has had an opportunity to receive public input on the RUA, hold any debate, and consider County staff reports.<sup>2</sup> In the alternative, Lambton County submits that the Board should impose conditions equivalent to all terms contained within the Lambton RUA<sup>3</sup>.

The Applicant submits that it is agreeable to the imposition of conditions concerning the RUAs that pertain to matters within the Board’s jurisdiction.

In Jericho’s view the matters in the RUAs that are within the Board’s jurisdiction relate only to the specific location of the transmission facilities as contained in Schedule B of each RUA.

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<sup>1</sup> Submissions of Middlesex County, p. 2

<sup>2</sup> Submissions of Lambton County, paragraph 12

<sup>3</sup> *Ibid.*, paragraph 15

Jericho submitted that Lambton County's request for a delay of the Board's decision to allow for additional time for public review of the RUA should be denied on the grounds that a delay would cause significant and material prejudice to Jericho.

### **Board Findings**

All of the parties have submitted that in their view it would be appropriate for the Board's approval to be conditional on compliance with Schedule B of each RUA concerning location of the transmission lines and related infrastructure within the municipal ROWs.

The Board agrees.

The Board does not see any need to make its decision conditional on Jericho obtaining all necessary approvals from the Counties. Jericho will be required to comply with these requirements in any event to the extent required by the RUAs and imposed by law.

The Board denies the request of Lambton County to defer its decision. The Board has not been advised of any objection to Schedule B in the Lambton RUA and Lambton County staff has endorsed it. The Board notes that Lambton County was granted intervenor status in this proceeding on November 25, 2013. The Board also notes the possibility that deferring its decision could cause prejudice to Jericho's project timelines and costs, as submitted by Jericho. Accordingly, the Board grants Jericho approval under section 101, conditional on the Transmission Facilities being constructed in accordance with the specific route which exist in Jericho's application, as amended, and Schedule "B" of the RUAs.

### **BOARD DECISION**

The Board finds that it would be in the public interest to grant Jericho leave to construct the facilities pursuant to section 92 of the *Act*, and that it would also be in the public interest to grant an Order to Jericho approving the construction of the proposed facilities upon, under or over a highway, utility line, or ditch under section 101 of the *Act*. The Board's decision is subject to conditions, which are fully set out in the Order below.

The Board notes that Jericho is responsible for obtaining all necessary approvals, permits, licences, certificates and easement rights required to construct, operate and maintain the proposed Transmission Facilities.

**THE BOARD ORDERS THAT:**

1. Pursuant to section 92 of the Act, the Board grants Jericho Wind, Inc. leave to construct the proposed Transmission Facilities in accordance with the Board's Decision in this proceeding. The granting of this leave to construct is conditional on the existence of a FIT contract between Jericho and the OPA, the fulfillment of the requirements of the SIA and CIA and Jericho commencing construction within 12 months of the date of the Board's Decision.
2. Pursuant to section 97 of the Act, the Board approves the forms of agreements with private landowners filed by Jericho in this proceeding.
3. Pursuant to section 101 of the Act, the Board grants Jericho authority to construct the proposed Transmission Facilities in accordance with the application as amended and the specific route in Schedule "B" of the Middlesex RUA, and Schedule "B" of the Lambton RUA.
4. Jericho shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

**ISSUED** at Toronto, May 6, 2014

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary